

X Governor Advisory Council  
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# Governor Advisory Council Hazardous Material Transportation



4 December 1996

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The Governor's Advisory Council on Hazardous Material Transportation was created by Governor Stephens in 1992 (Executive Order 18-92, Appendix A) and renewed by Governor Racicot (Executive Order 26-94, Appendix B) in 1994. The Advisory Council is charged with analysis of Montana's existing hazardous materials regulations and with recommendations to the Governor concerning these regulations. Furthermore, the council is charged with reviewing various preventative hazardous materials related programs. Final Council recommendations are due in the Governor's office by December 1996.

### ***Council Members***

Thomas M. Ellerhoff	Department of Environmental Quality (Co-Chair)
David A. Galt	Department of Transportation (Co-Chair)
Patricia Abelin	Montana Transportation Commission
Curt Laingen	Montana Motor Carrier Association
Col. Craig Reap	Montana Highway Patrol
Jim Greene	Military Affairs, Disaster & Emergency Services
Curt Rissmann	Montana Highway Patrol
Pat Kiem	Burlington Northern
Pam Langley	Montana Agri-Business Association
Ronna Alexander	Montana Petroleum Marketers Association
Joel Marshik	Department of Transportation, Environmental Unit
Dale Link	Lewistown Fire Department
Bill Reed	Missoula Rural Fire Department

### ***Background***

In 1990 concern was expressed in several areas of the state that vehicles transporting hazardous materials were unregulated in Montana. Some of the specific areas include the Flathead Lake area, Madison River/Ennis, and the Highway 191 corridor south of Bozeman.

Concerned individuals believed that these vehicles should either be banned from operation, or regulated in some additional manner. These hazardous materials transportation concerns focused not only on the motor carrier industry, but on rail shipments as well.

Recognizing the potential impact on Montana's environment, as well as the continuing and increasing demand for materials classified as hazardous, Governor Stephens created the Governor's Advisory Council on Hazardous Material Transportation to examine the issue.

The Council first met in December of 1992. The focus of the meeting was to develop a work plan to accomplish the tasks outlined in Executive Order 18-92.



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The Council quickly realized that the term "hazardous materials" covers a variety of commodities, but that often when Montanans think of hazardous materials, they think only of fuel and chemical tankers. The Council learned that hazardous materials include most fertilizers, items like charcoal briquettes, insecticides, hair spray and household cleaners.

The Council recognized that banning, or even restrictions in the routing of hazardous materials would impact the cost and availability of many necessities, including fuel for our vehicles and other motorized equipment.

### ***Task Assignments***

Working within the language of executive orders 18-92 and 26-94, the Council determined that task assignments would be to

- (1) review the effectiveness of existing state and federal regulations;
- (2) to identify and assess the significance of problems and concerns associated with existing regulations; and
- (3) to make appropriate recommendations to the Governor.

#### ***Task #1***

##### ***Review Existing Regulation and Regulating Agencies***

The Council recognized that, in order to assess the adequacy of existing regulation, a thorough historical understanding of efforts to regulate the transportation of hazardous materials would be required. Council members spent considerable time looking at regulations currently in effect and available enforcement and monitoring methods. Listed below is a synopsis of existing regulatory efforts:

### **Motor Carrier Enforcement**

Contact: Kris Phillips, State Director  
Agency: Office of Motor Carriers  
Safety  
Federal Highway Administration

The U.S. Department of Transportation, Federal Highway Administration, Office of Motor Carriers (OMC), maintains a division office in Helena. This Helena Division of the OMC is staffed by a State Director, three investigators, and one transportation assistant. This office is responsible for ensuring compliance with the Federal Motor Carrier Safety Regulation (FMCSR) and the Hazardous Material Regulation (HMR) (safety regulations) for motor carriers domiciled in Montana and Alberta, with regard to all interstate motor carriers, some intrastate motor carriers, all shippers of hazardous materials, and persons who manufacture, test, inspect, and certify packages used in the transportation of hazardous material. The OMC routinely conducts safety and compliance reviews to determine the compliance of persons subject to the office's jurisdiction. When persons are found to be non-compliant, appropriate action is taken to ensure the individuals take action to correct the violations discovered. If severe non-compliance by transporters of hazardous materials is identified, the action may include issuance of an order to cease interstate transportation of hazardous materials.

The OMC also administers a federal grant program referred to as the Motor Carrier Safety Assistance Program (MCSAP), for which the Governor has designated the Montana Highway Patrol as lead agency for management of the grant. This program provides funding in Montana for promotion of highway safety with primary emphasis on the roadside inspection of commercial motor vehicles, drivers, and hazardous material shipments. The Highway Patrol, in conjunction with the Montana Department of Transportation, Motor Carrier Services Division, conduct routine inspections



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throughout the state to ensure compliance with the FMCSR and the HMR (safety regulations).

## **MCSAP**

Contact: Curt Rissmann,  
Program Manager  
Motor Carrier Inspection Bureau  
Agency: Montana Highway Patrol

Contact: Gary Marten,  
Chief, Enforcement Bureau,  
Motor Carrier Services Division  
Agency: Montana Department of  
Transportation

The Montana Highway Patrol is the lead agency in Montana regarding commercial motor carrier hazardous material transportation issues. The State of Montana, through the Montana Highway Patrol, has adopted the FMCSR and the HMR, hereafter referred to as "safety regulations." These regulations deal with all facets of highway transportation safety from basic safety requirements for drivers and vehicles to specialized requirements for transportation and shipment of hazardous waste and hazardous materials (i.e., routing, parking and attendance, shipping papers, marking, labeling, placarding, emergency response, and driver training).

The State of Montana monitors the transportation of hazardous materials by motor carriers more closely than any other mode of transportation. Although Montana does not require a state permit or registration of a hazardous material carrier, the safe transportation of hazardous material is regulated in Montana.

Montana has adopted the FMCSR and HMR and enforces them throughout the State. These regulations cover areas that involve the marking, shipping, placarding, routing and all facets of the actual shipment. Additionally, the FMCSR's regulate vehicle and driver

safety criteria. These rules cover all aspects of motor carrier safety, from the driver to the vehicle itself, to the overall safety program in the company.

Highway Patrol and Motor Carrier Services Enforcement officers enforce the Federal hazardous material regulations CFR 49, Parts 107, 171-173, 177, 178 and 180 as adopted by Montana.

Hazardous materials shipment monitoring activities include the following:

- Shipping papers must properly identify the hazardous material.
- Vehicles and shipping containers are inspected to assure that they are properly marked, placarded, and labeled.
- The commercial vehicle driver license is checked for hazardous material endorsement.
- Tank trailers are inspected for proper spec design and compliance with safety requirements.
- Cargo tanks are inspected to assure proper spec design and compliance with Federal inspection requirements as mandated by the regulation.
- Notification of proper authorities in case of load contamination, leaks, or spills.

If a company or driver is found to be in violation, the violation must be corrected immediately. A safety inspection report will be completed and the unit hauling the hazardous material may be put out of service until the violation is corrected. A notice to appear may be issued.

At the state level, the Montana Highway Patrol is the lead agency in charge of the MCSAP. The Highway Patrol has 70 officers who are involved on a part-time basis inspecting vehicles for compliance of the FMCSR and HMR. The Patrol also has eight full-time inspectors dedicated to ensuring com-



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pliance to Federal safety regulations.

## **SERC**

Contact: Fred Cowie,  
Program Manager  
Agency: Disaster & Emergency  
Services  
Department of Military Affairs

The single item which pertains to the State Emergency Response Commission (SERC) can be seen as an underlying issue in A through H — safety of all employees involved, drivers, inspectors, responders, etc. Key regulations are 29 CFR 1910.120, involving hazardous materials incidents. Since these are OSHA regulation, SERC is not directly involved as enforcement people or regulators. SERC is the local jurisdiction's access point for some training funds in relation to these regulations.

## **Pipeline Enforcement**

Contact: Dennis Crawford,  
Program Manager  
Agency: Public Service Commission,  
Utility Division

PSC has intrastate enforcement for natural gas pipelines only. Hazardous liquids are regulated at the federal level. PSC has two inspectors (Mr. Crawford and Joel Tierney) who conduct on-site inspections. Mr. Crawford spends about 30 percent of his time on inspections/enforcement, and Mr. Tierney spends between 60 and 70 percent of time on inspections/enforcement.

Inspectors are trained at the Transportation Safety Institute in Oklahoma City, Oklahoma. Inspectors must attend and pass seven classes relating to natural gas pipeline enforcement. Montana has a 60105 certification, which means that we will adopt federal regulations, and

have inspection authority on intrastate operators. The USDOT also regulates pipelines. The Federal Regional Inspector is located in Lakewood, Colorado, and sends inspectors to Montana to inspect both interstate and intrastate hazardous liquid pipelines, and interstate natural gas pipelines.

If an incident occurs, the pipeline company is required to notify Washington D.C. immediately by telephone, who in turn notifies the regional inspector.

Montana inspectors do on-site inspections of new pipeline construction. They review written construction plans for conformance to pipeline safety standards. Montana inspectors also review the pipeline company's operation and maintenance, and emergency plan, which must meet federal standards. Additional duties include reviewing leak survey reports and checking the outside plant facility.

If violations are found, an inspector issues a notice of probable non-compliance to the company. These notices set a date that the non-compliance must be corrected.

If conditions of the informal procedure are not fully met, or if the informal report is ignored, a formal procedure follows: The PSC Commission issues an order to show cause, and judicial review may follow. Dennis is not aware that an incident has ever resulted in a formal procedure action.

Reference: 38.5.2201 through 38.5.2323 ARM.

## **Railroad Enforcement**

The Federal Railroad Administration (FRA) is the regulating and monitoring agency. The three main areas covered in the regulations deal with packaging, documentation-identification, and handling. Methods of manufacturing, packing, and storage of hazardous materials must be open to inspection. Montana railroads inspect materials at the point of receipt. Pack-



aging requirements relate to the type of container and how it is prepared. Documentation-identification involves shipping papers, labeling and placarding, as well as providing emergency response information. Handling incorporates such things as the storage and hauling of the materials.

Other regulations require all hazardous material transporters to be registered with the federal government. Effective April 1, 1993, all employees of an organization which deals with hazardous materials must receive specific job training every two years.

Contact: Wayne W. Budt,  
Administrator  
Agency: PSC, Transportation  
Division

Mr. Budt advised that enforcement is on a federal level only. The Public Service Commission does not have state inspectors for rail transport of hazardous materials.

The FRA in Billings has not had a hazardous material specialist for the last seven or eight months. We were advised to contact Portland; either Henry Jacobs, Hazardous Materials Specialist, or Chester Southern, Regional Specialist.

Contact: Henry Jacobs,  
Hazardous Materials Specialist  
Agency: Federal Railroad  
Administration

Mr. Jacobs advised that the FRA can write both civil penalties and criminal penalties against the responsible party. The responsible party in a violation could be the railroad, or the shipper, or the manufacturer of the container. A total of four hazardous material inspectors travel extensively; regions include eastern Montana and North Dakota, and western Montana, Idaho and Wyoming. In addition to the hazardous material inspectors, car inspectors, track inspec-

tors, switch inspectors, etc., can report hazardous material violations. If they see a violation, the regional office in Portland can assist them with completing the inspection. Additionally, the railroad must fill out forms and submit them to Washington, D.C., if they have a hazardous material incident such as a leaking rail car. Washington forwards these reports to the Portland office for follow-up.

### Airline Enforcement

There is no state statutory authority to regulate shipments of hazardous material or level of enforcement. The Federal Aviation Administration (FAA) CASFO representative, Bob Wilson, informed the Council that enforcement is coordinated through FAA Security in Seattle. There is no specific person in Montana, but someone from the Flight Standards office may photograph and report an incident to the security people in Seattle. More specific information is contained in 49 CFR 175.

Contact: Bob Wilson,  
Regional Dangerous Goods  
Coordinator  
Agency: Civil Aviation Security  
Federal Aviation Administration  
Seattle (206) 227-2722

Title 49 in the Code of Federal Regulations Parts 100-177 covers transportation of hazardous materials for all air carriers and shippers. Violations include civil penalties to \$25,000 per violation. Each air carrier who meets FAA compliance is issued a certificate by the FAA. Additionally, the carrier must have a program which provides job-specific training in the handling of hazardous materials, and includes all personnel involved in processing a shipment of hazardous materials, not just the handlers. Airlines that do not carry hazardous materials must also receive training in dangerous goods recognition.

In addition to hazardous material inspectors, the Seattle region provides



all airport security personnel in seven western states — Colorado, Wyoming, Montana, Idaho, Washington, Oregon, and Utah.

**Note:** The majority of United States and foreign airlines are members, or associate members, of the International Air Transport Association (IATA) and comply fully with IATA rules Dangerous Goods Regulations.

## **Task 2**

### ***Identification of Problems and Concerns Associated with Existing Regulations***

Armed with an understanding of existing regulation, the Council moved to identify problems and concerns across the state associated with the transportation of hazardous commodities. The Council adopted two problem identification methods. First, the Council contacted local officials for direct input. Secondly, the Council reviewed hazardous materials accident records and spill costs.

The Council contacted the Montana Association of Counties (MACo) for advice on the best method to elicit local input. A letter was sent through MACo to each County Commissioner Office asking them to share their concerns about hazardous materials transportation. Four counties responded with concerns ranging from funding issues for cleanup crews to concerns over hazardous material routing. The receipt of only four responses (Appendix C) prompted Co-Chair David Galt to attend the annual MACo conference in September of 1995. Mr. Galt explained the purpose of the Council to the Commissioners and asked again for their input. No further comments were received, however, officials from six counties personally expressed their satisfaction with existing practices. Further, these same county people expressed concern over using this

Council to establish any new regulations. This same concern was also expressed in the written comments received by the Council. All actual communication between the Council and the counties is contained in Appendix C.

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### ***MCS Officers and Highway Patrol Inspectors inspect hazardous material transporters for compliance with all pertinent hazardous material regulations***

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The following are identified concerns and problems, and the Council's comments or recommendation.

#### ***Funding Issues***

Funding issues and/or funds for training and equipment for use by response crews are outside the scope of the Council. However, paragraph B in Executive Order 26-94 requires the Council to work closely with the SERC in coordinating action plans to fulfill our respective missions. Requests for funding, training, and formation of response teams are the responsibility of the SERC. The Council recommends that these issues be brought to the attention of the SERC, but did not endorse fees on carriers as a source of funding.

#### ***Port-of-Entry Inspection***

Both Gallatin and Missoula Counties expressed concerns regarding inspection of hazardous material transporters. Gallatin County felt that Montana should have ports of entry at which hazardous materials transporters would be consistently inspected. Significant confusion exists on this issue as Department of Transportation weigh station MCS Officers and Highway Patrol Inspectors do inspect hazardous material transporters for compliance with all pertinent hazardous material regulations. Some concern was expressed because of the perception that weigh station officers checked only bills of lading and placards.

In addition to weigh stations, both the



Motor Carrier Services Division and the Highway Patrol have officers working from mobile units on the open road. These officers randomly inspect all trucks traveling on Montana's highway system, including hazardous material transporters, with particular emphasis on trucks operating in areas where highway routes are not monitored by a permanent weigh station. While major highways into Montana are monitored by weigh stations, a weigh station on every highway would be cost prohibitive.

### **Cleanup Response**

Gallatin County suggested establishment of state authority enabling emergency response personnel to contact cleanup crews directly, then bill the carrier for the cost. Current law requiring the hazardous materials carrier to contact cleanup crews if a spill occurs often causes time delays which increase the magnitude of the release. Two governments in Montana have successfully established the local authority necessary to clean up spills quickly and have successfully established the local authority necessary to recover costs from the responsible party(ies). The Council recommends that Gallatin County contact Lewis and Clark County (DES) and the Confederated Salish Kootenai Tribe (Shoreline Protection) for more details on their cleanup response programs.

### **Routing**

Federal hazardous material regulations contain provisions with which a jurisdiction must comply if that jurisdiction wishes to restrict hazardous material transportation. Failure of a jurisdiction to follow these requirements is cause for preemption by the U.S. Department of Transportation. Montana has never restricted a route from the transportation of hazardous material, nor does the Montana Department of Transportation have the authority

to restrict such transportation outside the guidelines established by USDOT. Federal HM Regulations have provisions that tribes and local jurisdictions can follow if they wish to route hazardous material.

### **Accident Statistics**

The Council investigated the ratio of hazardous material spills to commercial vehicle accidents. This same approach was taken to compare accidents to releases by railroads as well.

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*A Highway Patrol analysis of commercial vehicle accidents in 1994 showed a total of 900 commercial vehicle accidents, of which 35 involved hazardous materials*

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The intent of this effort was to determine if a serious trend was evident in the accident statistics. The Highway Patrol analyzed commercial vehicle accidents in calendar year 1994. The results of their analysis showed a total of 900 commercial vehicle accidents, of which 35 involved hazardous materials. Of the 35 commercial motor vehicle accidents that involved hazardous materials, 8 resulted in a HM release.

The Department of Transportation, Maintenance Division, reviewed their accounts receivable accounts for costs associated with hazardous material release control. It is difficult to determine the actual costs in a calendar year, so the maintenance figures include actual cleanup costs from October 1, 1993 through September 30, 1995. During that time frame, MDT billed various carriers a total of \$10,795 to reimburse costs accrued by MDT maintenance crews. This figure is not meant to represent the total cost of hazardous material spills. However, it is significant in that MDT crews are usually involved in hazardous material spills that occur on highway right-of-way. The Council thought that this information would give a glimpse of the magnitude of hazardous material releases that result from motor carrier accidents.



Ms. Ronna Alexander, Director of Montana Petroleum Marketer's Association, checked with the Petroleum Marketers Association of America (PMAA) in an effort to acquire additional information about hazardous material accidents. The PMAA contacted the Research and Special Programs Administration (RSPA) of the United States Department of Transportation. RSPA tracks incidents that involve the transportation of hazardous materials. During the time period of January 1, 1984 through July 31, 1994, 355 accidents involving small cargo tanks (under 3,500 gallons) nationwide were reported to RSPA. These incidents resulted in 5 fatalities, 4 injuries, 13 evacuations, and over \$4.9 million in cleanup costs. The largest cleanup cost was \$500,000. However, the average cost was \$7,700 per incident.

The Council also tried to look at similar statistics involving rail transportation of hazardous materials. The following figures are published for Montana by the FRA for 1994:

Total number of trains carrying hazardous material involved in an accident ..... 14

Total number of rail cars involved in these accidents ..... 874

Total number of rail cars carrying hazardous material ..... 75

Number of damaged rail cars ..... 6

Number of cars releasing hazardous material ..... 1

### Task #3

#### Recommendations and Conclusions

1. Continue to enforce existing regulations. Additional regulations are unnecessary at this time.

The U.S. Department of Transportation has developed extensive hazardous material regulations. Montana has adopted those regulations for motor carrier transportation. Accident records indicate that these regulations are working. The Council agreed that no amount of regulation will eliminate the possibility of the occurrence of a hazardous material transportation accident. The Council believes that the best course of action is to enforce the existing federal regulations, which has been done in Montana since the mid-1980's. Given the level of complexity, the Council did not think the state should develop further regulations.

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*The Council believes that the best course of action is to enforce the existing federal regulations,*

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Although there have been accidents in Montana, the percentage of accidents compared to the amount of transportation is low. Of the concerns that were expressed, we believe they can be addressed without additional state government regulations.

2. Vehicle-specific identification, and the monitoring of individual vehicles transporting hazardous materials is not possible within the confines of existing resources.

The actual identification of every movement of hazardous material in Montana would be a monumental task and impossible to enforce and accomplish with existing resources. Such a system would require that state government develop a mechanism to identify each time a local bulk delivery business serviced a customer. The Council felt that such a program would not provide benefits that even closely equaled the cost. As far as regulating shipments of hazardous material, that regulatory infrastructure is in place.

Interstate transportation has been, and continues to be, regulated by the Federal Department of Transportation. As previously discussed, only the motor carrier industry is regulated by an ex-



tensive system of state agencies. Interstate motor carriers involved in the transportation of hazardous material have been required to comply with the Code of Federal Regulations regarding hazardous materials. While intrastate carriers must comply with all CFR equipment standards, they were exempt from some regulations covering hazardous material. Bona fide farmers and ranchers are exempt from most interstate hazardous material regulations, as well as vehicle and driver safety requirements, if the transportation occurs for their own agricultural enterprise. These hazardous materials transported are generally fertilizer, fuel and pesticides. The most frequent movement of hazardous materials by farmers is small fertilizer nurse tanks or fuel that rarely exceed 5,000 pounds.

The Montana Highway Patrol has recently begun a program for intrastate motor carriers. This program, Intrastate Safety Fitness Program, is under the administration of the Motor Vehicle Inspection Bureau of the Montana Highway Patrol. The goal of this program is to assign every commercial carrier, who operates solely within Montana, a fitness rating. This program mirrors safety fitness requirements for interstate carriers. However, the MHP has no enforcement authority extending to statewide transportation performed by farmers and ranchers.

A motor carrier who fails to comply with the safety regulations could be issued an unsatisfactory safety rating. The effect of an unsatisfactory rating for a hazardous material transporter would be a cease-and-desist order, which effectively closes the business until safety compliance is achieved.

3. Continue to protect the health and safety of the public and the environment by reducing the risk of accidents through a safety inspection program focusing on vehicles and

companies that transport hazardous materials.

This program is already in place in Montana. Currently, the Montana Highway Patrol, and the Motor Carrier Services Division routinely conduct vehicle inspections of commercial motor vehicles to ensure compliance with FMCSR and HMR. Specific hazardous material regulations include shipping papers, driver qualifications, packaging requirements (which include a cargo tank as a "package"), tank testing requirements, placarding, marking emergency response requirements and routing specifications. Vehicles and drivers found to have serious safety violations are placed out of service at the inspection site and corrections made before they are allowed to proceed. All other violations are required to be repaired before the vehicle or driver is dispatched on another trip.

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*The Intrastate Safety Fitness Program doesn't extend to statewide transportation performed by farmers and ranchers*

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Information from each inspection is used in performing a compliance review of the carrier, which leads to establishment of a carrier fitness rating. Carriers whose overall safety program is not in compliance run the risk of an unsatisfactory safety rating, which precludes the carrier from transporting hazardous materials.

4. Continue to work within, and improve, Montana's existing hazardous materials and hazardous waste transportation monitoring process.

As this time, only transporters of hazardous waste that originates, terminates, or will be stored in Montana, are required to be registered with the State of Montana. This registration process is administered by the Department of Environmental Quality. This regulation is oriented more toward hazardous waste generators than with transporters. There is no other state require-



ment or permit necessary to transport hazardous material in Montana. The only requirement is that these carriers be in compliance with the FMCSR's and Federal HMR.

Hazardous Material transporters of certain quantities of HM must register and pay annual registration fee to USDOT (RSPA). The funds generated by these registration fees provide funds for local planning and training for hazardous incident response. Montana's share of these funds is currently around \$75,000 per year.

The Montana Highway Patrol is the lead agency for the enforcement of safety regulation in Montana. Since hazardous material falls under the umbrella of those safety regulations, the Patrol disseminates information. Given the extent of hazardous material regulation in Montana, this current practice addresses the requirements of this task.

5. Encourage prevention-based safety programs designed to reduce the probability of accidental releases.

The compliance review activities of the Motor Vehicle Inspection Bureau of the Montana Highway Patrol focuses on prevention-based motor carrier safety. The purpose of the compliance review is to ensure that a carrier has taken the adequate precautions and developed a safety program within the carrier's own organization. Statistics show that participation in effective safety programs, such as the program offered by the Montana Motor Carriers Association, reduce accidents, as well as Worker's Compensation claims. Compliance reviews are an integral part of the Montana Highway Patrol's Motor Vehicle Inspection Program.

regulations and the activities of the various associated, existing local, state and federal agencies. The Council concludes that Montana has built a good, common sense program with the flexibility to grow and change as situationally or economically dictated.

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*The request to fund local incident response team activity surfaced frequently.*

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The Council believes that because Montana does not currently register or permit each hazardous material transporter traveling within the state, a misconception has arisen concerning adequacy and effectiveness. Review by the Council of state accident data demonstrates that current hazardous material regulations, and the accomplishments of the agencies working in concert to monitor, train, enforce and respond, as authorized by those regulations, are both adequate and effective.

Over the course of the Council's work, the request to fund local incident response team activity surfaced frequently. The Council believes that a position on this issue would fall outside the Council's scope. Additionally, because funding falls within the purview of the SERC, the Council will not try to address this issue except to remind all parties that hazardous materials carriers already pay \$300 annually per carrier to the USDOT, which is returned to the state to fund local planning and emergency response. The SERC should continue to monitor this fund allocation.

## **Conclusion**

The Council reviewed Montana's hazardous materials transportation



STATE OF MONTANA  
OFFICE OF THE GOVERNOR  
EXECUTIVE ORDER NO. 18-92

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EXECUTIVE ORDER ESTABLISHING A  
STATEWIDE COORDINATION COUNCIL FOR THE  
TRANSPORTATION OF HAZARDOUS WASTES AND MATERIALS

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WHEREAS, the protection of Montana's environment and its citizens is important to every Montanan requiring constant review of preventive measures in transporting hazardous materials; and

WHEREAS, the number of vehicles, including rail and air transporters, involved in the transportation of hazardous materials or hazardous waste through this state is on the increase; and

WHEREAS, the public health, safety and the environment may be jeopardized when hazardous materials or hazardous waste are transported in an unsafe manner; and

WHEREAS, the problem of unsafe transportation of hazardous waste and hazardous materials and the potential of accidental release has become a matter of statewide concern.

NOW, THEREFORE, I, STAN STEPHENS, Governor of the State of Montana, by virtue of the authority vested in me pursuant to the Constitution and the laws of the State of Montana, including Section 2-15-122, MCA, do hereby establish the Governor's Hazardous Materials Transportation Advisory Council.

I. PURPOSE

The purpose of this council is to advise the Governor's Office and local and state governmental agencies in the following areas:



A. to determine the appropriate level of regulation of hazardous materials and hazardous waste transportation in and through Montana.

B. to assure the safe operation with all modes of transportation involved in shipping hazardous materials and hazardous waste within this state;

C. to develop a system capable of identifying and regulating transportation of hazardous materials or hazardous waste utilizing existing resources;

D. to protect the health and safety of the public and environment by reducing the risk of accidents through a safety inspection program for vehicles and companies which transport hazardous materials or waste;

E. to review the feasibility of implementing a centralized program where carriers of hazardous materials or hazardous waste can obtain licenses, permits or information on current state regulations;

F. to implement a proactive program that concentrates on preventive safety measures to reduce the probability of accidental releases;

G. to ensure the coordination between all state agencies regulating hazardous materials and hazardous waste with a minimum of duplication.

H. to work closely with the State Emergency Response Commission in coordinating action plans in fulfilling their respective missions.

In carrying out these responsibilities, the Department of Transportation is designated as the lead agency and is authorized



to seek the cooperation of any executive agency or office of state government to supply necessary data, reports or other information to carry out its duties under this order. Either department, office, division or agency of the state is directed to the extent consistent with law, to reasonably cooperate with the Department of Transportation and to furnish it with such information, personnel and assistance as necessary to accomplish the purpose of this order. In addition, this council will have the authority to appoint people from state government, upon consultation with department directors, to serve on a technical committee under this council's chairman.

## II. COMPOSITION

The council shall be composed of the following members who shall serve at the pleasure of the Governor:

Mr. Dave Galt, Chairperson  
Administrator  
Motor Carrier Division  
Department of Transportation  
Helena, MT 59620

Mr. John Delano  
Delano and Associates  
139 N. Last Chance Gulch  
Helena, MT 59601

Mr. Rick Bartos  
Chief Legal Counsel  
Office of the Governor  
State Capitol  
Helena, MT 59620

Mr. George Teslovick  
Montana Aeronautics Comm.  
2778 Fern Drive  
Great Falls, MT 59405

Mr. Ben Havdahl  
Montana Motor Carriers Assn.  
501 North Sanders  
Helena, MT 59601

Mr. Dennis Christenson  
Flathead Basin Commission  
723 Fifth Avenue East  
Kalispell, MT 59901

Mr. Duane Robertson  
Solid & Hazardous Waste Bureau  
Dept. of Health & Environmental  
Sciences  
Helena, MT 59620

Mr. Bill Good, Admin.  
Disaster & Emergency  
Services  
Dept. of Military Affairs  
Helena, MT 59620

Col. Robert J. Griffith  
Montana Highway Patrol  
Department of Justice  
Helena, MT 59620



III. CHAIRPERSON

The Director of the Department of Transportation or his designee shall serve as chairperson of this Council and shall serve at the pleasure of the Governor.

This Order is effective immediately.

GIVEN under my hand and the GREAT  
SEAL of the State of Montana this  
2nd day of September in the year  
of our LORD, One Thousand Nine  
hundred and Ninety-two.

/s/ Stan Stephens  
STAN STEPHENS  
Governor

ATTEST:

/s/ Mike Cooney  
MIKE COONEY, Secretary of State

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State of Montana  
Office of the Governor



Executive Order No. 26-94

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EXECUTIVE ORDER CONTINUING THE GOVERNOR'S  
HAZARDOUS MATERIALS TRANSPORTATION ADVISORY COUNCIL

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WHEREAS, the protection of our environment and citizens is important to every Montanan and requires constant review of preventive measures taken in the transport of hazardous materials; and

WHEREAS, the number of vehicles, including rail and air transporters, involved in the transportation of hazardous materials or hazardous waste through this state is on the increase; and

WHEREAS, the public health, safety and environment may be jeopardized when hazardous materials or hazardous waste are transported in an unsafe manner; and

WHEREAS, the problem of unsafe transportation of hazardous waste and hazardous materials and the potential of accidental release is a matter of statewide concern.

NOW, THEREFORE, I, MARC RACICOT, Governor of the State of Montana, by virtue of the authority vested in me pursuant to the Constitution and the laws of the State of Montana,



1 including Section 2-15-122, MCA do hereby establish the  
2 Governor's Hazardous Materials Transportation Advisory  
3 Council.

4 I. PURPOSE

5 A. The purpose of this council is to advise the  
6 Governor's Office and local and state governmental  
7 agencies in the following areas:

8 1. the effectiveness of existing regulation and the  
9 determination of any additional state regulation  
10 necessary to assure the safe operation in all modes of  
11 transportation involved in shipping hazardous materials  
12 and hazardous waste within this state;

13 2. the feasibility of developing a system capable of  
14 identifying and regulating transportation of hazardous  
15 materials and hazardous waste utilizing existing  
16 resources;

17 3. the protection of the health and safety of the  
18 public and the environment by reducing the risk of  
19 accidents through a safety inspection program for  
20 vehicles and companies which transport hazardous  
21 materials or waste;

22 4. the feasibility of implementing a centralized  
23 program where carriers of hazardous materials or  
24 hazardous waste can obtain licenses, permits or  
25 information on current state regulations;

26 5. implementation of a proactive program that  
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1 concentrates on preventive safety measures to reduce the  
2 probability of accidental releases;

3 6. coordination between all state agencies regulating  
4 hazardous materials and hazardous waste with a minimum of  
5 duplication.

6 B. The Council shall work closely with the State Emergency  
7 Response Commission in coordinating action plans to fulfill  
8 their respective missions.

9 C. In carrying out these responsibilities, the Department of  
10 Transportation and the Department of Health and Environment  
11 Sciences are designated as lead agencies and are authorized to  
12 seek the cooperation of any executive agency or office of  
13 state government to supply necessary data, reports or other  
14 information to carry out the council's duties under this  
15 order. All agencies of the state are directed to the extent  
16 consistent with law, to reasonably cooperate with the council  
17 to furnish it with such information, personnel and assistance  
18 as necessary to accomplish the purpose of this order.

19 In addition, this council will have the authority to  
20 appoint people from state government, upon consultation with  
21 department directors, to serve on a technical committee under  
22 this council's chairman.

## 23 II. COMPOSITION

24 The names and addresses of members who shall serve at the  
25 pleasure of the Governor are submitted by separate letter to  
26 the Department of Transportation, the Department of Health and  
27



1 Environmental Sciences and the Secretary of State.

2 The Council shall be co-chaired by a member representing  
3 the Department of Transportation and a member representing the  
4 Department of Health and Environmental Sciences.

5 III. DURATION

6 The Council shall exist for a period of two years from  
7 the effective date of this Order unless rescinded by  
8 subsequent Executive Order.

9 This Order is effective immediately.

10  
11  
12 Given under my hand and the  
13 GREAT SEAL of the State of  
14 Montana, this 13<sup>th</sup> day of  
December, 1994.

15 Marc Racicot  
16 MARC RACICOT, Governor

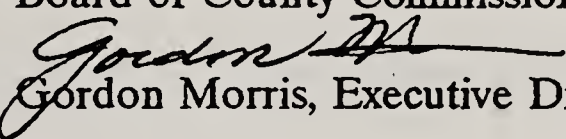
17  
18 ATTEST:

19 Mike Cooney  
20 MIKE COONEY, Secretary of State  
21  
22  
23  
24  
25  
26  
27



**MONTANA  
ASSOCIATION OF  
COUNTIES**

2711 Airport Road  
Helena, Montana 59601  
(406) 442-5209  
FAX (406) 442-5238

TO: Board of County Commissioners  
FROM:  Gordon Morris, Executive Director  
RE: Hazardous Materials  
DATE: July 17, 1995

I am writing to urge your involvement in assessing the effectiveness of current state regulations on the transportation of hazardous materials.

As you know, everyday hazardous materials are being transported through the state and the counties therein. To date we have been fortunate and have not had a major incident but the odds are against us in terms of this continuing to be the case.

The Department of Transportation as discussed in the Governor's Executive Order 26-94 is charged with working with the Hazardous Materials Transportation Advisory Council. The council is seeking comment on any aspect of concern when it comes to trying to insure safe transportation of hazardous materials within the state. They are specifically looking for comments from County Commissioners.

I believe the Council has appropriately recognized that Commissioners and DES Coordinator's would be knowledgeable on the issues, since they are on the front line, so to speak, in responding to potential incidents. Please respond directly to Mr. David A. Galt at DOT with a copy to MACo at your earliest convenience.

Thank you for your attention to this critical issue involving the public health and safety of your constituents.

GM/mrp





July 11, 1995

County Commissioners

Subject: Hazardous Materials Transportation Advisory Council


The Hazardous Materials Transportation Advisory Council is requesting your help.

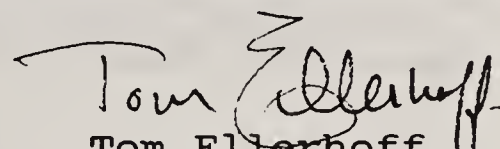
Last year the Governor issued Executive Order No. 26-94 continuing the efforts of the Governor's Hazardous Materials Transportation Advisory Council (enclosed). Multiple objectives are outlined in the executive order, and the council has initiated action on these.

Before we proceed too far down the list, we are asking for your help regarding the "effectiveness of existing regulations and the determination of any additional state regulation necessary to assure the safe operation in all modes of transportation involved in shipping hazardous materials and hazardous waste within this state." We believe we know the major issues and concerns and the appropriateness of existing laws and regulations, but just in case we have missed something we are asking you to provide us your thoughts.

We are asking all of the County Commissioners in the state to take some time to think about hazardous material transportation regulation and, based on your knowledge and experience, provide us your thoughts on this matter. We would like this advice by Friday, August 25, 1995. We plan to have an Advisory Council meeting in October 1995, and we intend to put together an action plan for the council. Your thoughts will help us formulate this plan and achieve the Governor's expectation of the council.

We would like to thank you in advance for your assistance.

  
David A. Galt  
Co-Chair

  
Tom Ellerhoff  
Co-Chair

DG:G:MCS:127.cg

Enclosure

cc: Local Emergency Response Coordinator





BCC 95-442

August 29, 1995

David A. Galt  
Montana Department of Transportation  
P.O. Box 201001  
Helena, MT 59620-1001

Dear Mr. Galt:

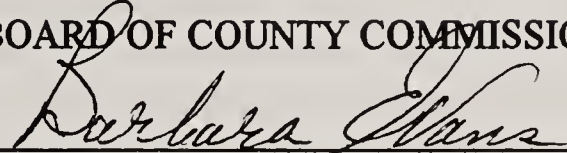
Per your request of July 11, 1995, the following are some of our concerns regarding transportation of hazardous materials in Montana:

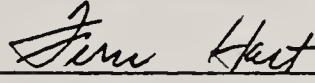
- Lack of official knowledge of types, volumes, incident methodologies, and times of shipments
- Citizen awareness and precautions
- Inspections
- Routing
- Safety (material and hauling equipment)
- Black market transport
- Incident responsibility and clean-up
- Authority

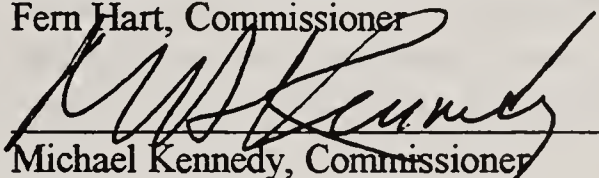
We hope this information is helpful to you.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

  
Barbara Evans, Chairman

  
Fern Hart, Commissioner

  
Michael Kennedy, Commissioner

BCC/kv

cc: Gordon Morris, MACo



State of Montana

*County of Gallatin*  
Bozeman



David A. Galt, Co-Chair  
Hazardous Materials Transportation Advisory Council  
Montana Department of Transportation  
P.O. Box 2201001  
Helena, MT. 59620-1001

August 7, 1995

Dear Mr. Galt:

Thank you for your invitation to comment on our concerns regarding transportation of hazardous materials in Montana. We met with our Disaster and Emergency Director and law enforcement personnel about their concerns and we respectfully submit the following comments.

The Montana State Legislature began an effort to develop regional response units to hazardous spills, but they never funded the project. The state needs to fund this effort so that regional response units can be developed, equipped, and trained. The state has very little capacity to respond to major hazardous spills.

We do not believe that major new regulations need to be imposed. However, the regulations already in effect need to be enforced. Montana needs a Port of Entry or some other mechanism to consistently screen transporters of hazardous materials. GVW scales might inspect bills of lading to assure that trucks which carry hazardous materials display appropriate placards. All law enforcement agencies that stop commercial vehicles should also check bills of lading and cargo to assure that they are properly signed.

The Department of Transportation needs to regulate train speeds which are appropriate to the area and the content of the cargo. Trains run through the center of several towns in Gallatin County at high rates of speed. Efforts to reduce those speeds have been defeated in the courts.

After a spill of hazardous waste has occurred, our first responders have encountered difficulties in billing the haulers for the clean up. Materials that are potentially hazardous need to be more clearly defined for billing purposes. Local hazardous response teams need a new procedure which gives them the authority to contact clean up crews directly and bill the company responsible for the spill. The current procedure which requires the

*Core issue.*  
*LERP needs to cover*




spiller to contact a clean up crew often causes time delays which increase the magnitude of the incident and the damage to the environment. Another possible solution to this problem is to require all haulers to have a predesignated clean up responder in every area in which they haul.

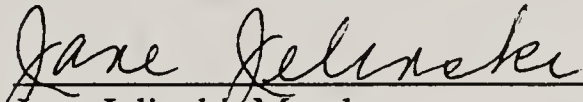
We are pleased that the Hazardous Materials Transportation Advisory Council has been created, and hope that our comments are helpful. If you have any further questions, we would be happy to meet with you or the Council at any time.

Respectfully submitted,

GALLATIN COUNTY COMMISSION



Kris Dunn, Chairman



Jane Jelinski, Member



Phil Olson, Member

cc: MACo



POWDER RIVER COUNTY  
PO Box J  
Broadus, MT 59317

TO: David A. Galt, Co-Chairman  
Hazardous Material Transportation Advisory Council

RE: Hazardous Material & Waste Transportation Assessment

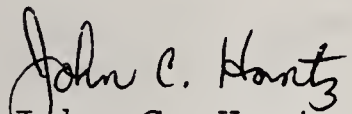
DATE: August 21, 1995

The transporting of hazardous material and hazardous waste through Powder River county has always been of great concern to our commissioners, Sheriff's department and volunteer fire department.

We are fortunate that we have a DOT weigh station in Powder River county and that the officers are inspecting vehicles and drivers transporting hazardous material.

At this time our greatest concern is in the center of Broadus, where Highway 212 makes a 90 degree turn. The Sheriff's office and fire department are constantly training to respond to a hazardous material accident at this location, which is within one block of the court house, 100 feet from a service station and motel, 200 feet from our only grocery store, and 4 blocks from our nursing home.

We feel the state regulation may be adequate, and our greatest concern is the possibility of an accident on Highway 212 at the 90 degree turn in the center of Broadus, which may involve hazardous material or waste.

  
John C. Hantz

Disaster & Emergency Services Coordinator  
Powder River County

cc: Vic Phillipi, Chairman, Powder River County Commissioners  
Gordon Morris, Executive Director, Montana Association of  
Counties



# FERGUS COUNTY

## STATE OF MONTANA

*Lewistown, Montana 59457*

August 22, 1995

David A. Galt  
2701 Prospect Avenue  
P.O. Box 201001  
Dept. of Transportation  
Helena, MT 59620-1001

Dear David:

The most important issues that we feel need to be addressed are:

- 1) Training all responders to the awareness level.
- 2) To form a hazardous materials response team consisting of persons from all of the fire districts with Lewistown Fire Department being the lead agency. This team would be trained to the operations level and some to the technicians level.
- 3) To have the equipment to respond to some of the incidents that may occur in Fergus County.
- 4) Money to make sure that all of the things mentioned above can happen.

We hope that these recommendations will help you with your planning.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
FERGUS COUNTY

*Absent*  
\_\_\_\_\_  
ALFRED B. MILLER, CHAIRMAN

*[Signature]*  
\_\_\_\_\_  
VERNON PETERSEN, V-CHAIRMAN

*Kathie A. Bailey*  
\_\_\_\_\_  
KATHIE A. BAILEY, COMMISSIONER

VP/mb





